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Appeal from Chancery Court of Richmond.

Action by Edgar Allan, Jr., against Henry G. Heeke and others. Judgment for plaintiff, and named defendant appeals. Affirmed.

*Leake & Buford*, of Richmond, for appellant.

*Edgar Allan, Jr.*, and *Arden Howell*, both of Richmond, for appellee.

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SHERRY, Chief of Police of City of Richmond, *v.* LUMPKIN.

March 18, 1920.

[102 S. E. 658.]

**1. Municipal Corporations (§ 185 (5)\*)—Mayor Is Not by Constitution Given Authority to Remove Policeman; "Such Officers."**—Const. § 120, declaring that the mayor shall see that the duties of the various city officers and members of the police and fire departments are faithfully observed, and that he shall have power to suspend such officers and members of the police and fire departments and to remove such officers and also members of said departments when authorized by the General Assembly, does not of itself give the mayor of city power to remove members of the police and fire departments, the expression "such officers" referring to city officers as distinguished from policemen and firemen, and the power of removal, if conferred on the mayor, must be found in the statutes.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 203, 204.]

**2. Municipal Corporations (§ 124 (5)—Constitutional Provision As to Powers of Mayor Not a Grant of Power.**—Const. § 120, relating to the powers of mayors of cities, and declaring that the mayor shall have power to remove city officers and members of the police and fire departments when authorized by the General Assembly, is not a grant of power to the General Assembly, but a mere recognition of its sovereign powers by virtue of which it might authorize the mayor of the city to remove policemen.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 203, 204.]

**3. Municipal Corporations (§ 180 (1)\*)—Policemen Are "State Officers;" "Municipal Officers."**—Policemen are "state" and not "municipal" officers.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Municipal Officer; State Office .]

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 192.]

**4. Municipal Corporations (§ 185 (5)\*)—Mayor of Richmond Not Authorized to Remove Policemen.**—Neither under Code 1904, § 1033,

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

relating to the duties of mayors which specifically authorizes them to suspend members of the police and fire departments, nor under Richmond Charter Act of 1918, authorizing the mayor of Richmond to appoint a director of public safety, which director is authorized to appoint a chief of police, removable at his pleasure, the chief being given the power to remove policemen with the approval of the director, is the mayor of the city of Richmond authorized to remove policemen; the statutes preserving the distinction between municipal officers and members of the police and fire departments found in Const. § 120.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 203, 204.]

**5. Municipal Corporations (§ 124 (5)\*)—Whether Official's Power of Removal Is Exclusive Depends on Intention.**—Whether a power of removal, as of members of a city police force, vested by the Constitution in specified officers, is exclusive, is a question of intention.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 203, 204.]

**6. Municipal Corporations (§ 124 (5)\*)—Legislature May Not Provide Method of Removal Inconsistent with Constitution.**—Where the Constitution fixes a procedure for removal of inferior officers of a municipality, as well as members of the police and fire departments, the Legislature may not provide inconsistent methods.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 203.]

**7. Constitutional Law (§ 48\*)—Statute Not Unconstitutional Unless Clearly Repugnant to Constitution.**—The courts should not declare an act of the General Assembly unconstitutional unless fully satisfied that the act is repugnant to the Constitution.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 152.]

**8. Municipal Corporations (§ 124 (5)\*)—Richmond Charter Giving Chief of Police Power to Remove Officers Is Valid.**—While Const. § 120, gives the mayor power to remove city officers and members of police department, when authorized by the General Assembly, Richmond Charters, Act of 1918, providing that the terms of officers and members of the police force shall be during good behavior and efficiency, and that any officer or members of the force may be fined, removed, or suspended by the chief of police subject to the approval of the director of public safety, is valid.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 203.]

**9. Municipal Corporations (§ 185 (4)\*)—Chief of Police on Removing Officer Need Not Grant Formal Trial.**—Under Richmond Charter, § 86, providing that the chief of police subject to approval of the director of public safety may remove a policeman whenever the

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

same shall in the judgment of the chief be for the good of the service, etc., the chief of police enjoys an absolute power of removal subject to approval of the director, notwithstanding the declaration that members of the department shall hold during good behavior and efficiency, so the chief of police need not as a condition of removal afford the officer proceeded against a formal trial, and the right to appear by counsel and offer evidence.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 204.]

**10. Municipal Corporations (§ 185 (4)\*)—Chief of Police by Furnishing Charges Did Not Abrogate Power of Removal.**—That the chief of police furnished policeman with statement of charges against him, and authorized policeman who was suspended to bring witnesses to testify in his behalf, was in no way an abrogation of the chief's absolute power of removal, and the policeman suspended was not entitled to appear by counsel and have a formal trial.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 204.]

**Error to Hustings Court of Richmond.**

Application by M. F. Lumpkin for writ of mandamus against C. A. Sherry, Chief of Police of the City of Richmond. Peremptory writ of mandamus was issued against respondent requiring him to permit relator, a policeman, at his trial on charges preferred to summon witnesses, etc., and respondent brings error. Reversed, and writ dismissed.

*George Wayne Anderson and H. R. Pollard*, both of Richmond, for plaintiff in error.

*Nunnally & Miller*, of Richmond, for defendant in error.

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RECTOR et al. v. HANCOCK.

March 18, 1920.

[102 S. E. 663.]

**1. Limitation of Actions (§ 27\*)—Parol Agreement for Release of Notes Held Barred by Limitations.**—Where the makers of notes secured by deed of trust on land agreed by parol that the holder should be allowed to go into possession, etc., and enjoy the rents and profits and that the makers would remain on the property in the employment of the beneficiary and perform services on the property without compensation except their board and keep, and that at the maturity of the notes the beneficiary should cancel the obligation and release the deed of trust, the makers' right of action, if the agreement be regarded as a transaction separate and distinct from the

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.